

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

TX 2005-000051

01/16/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

CHRISTOPHER M WATTS, et al.

C EDWIN WITT JR.

v.

ARIZONA STATE DEPARTMENT OF  
REVENUE

MICHAEL F KEMPNER

**UNDER ADVISMENT RULING**

**(Plaintiffs' and Defendant's Motions For Summary Judgment)**

Plaintiff is engaged in the business of leasing construction equipment, including water-spraying trucks and water wagons used, at least for the most part, by lessees to reduce the dust pollution caused by their activities. Most of the lessees are located in Arizona, though a few are not.

A.R.S. § 43-1081(A) states, "A credit is allowed against the taxes imposed by this title for expenses that the taxpayer incurred during the taxable year to purchase real or personal property that is used in the taxpayer's trade or business in this state to control or prevent pollution." (A.R.S. § 43-1170(A) has identical language: it applies to corporations, while Section 1081 applies to individuals like Plaintiffs.) Plaintiffs urge that "used in the taxpayer's trade or business," "in this state," and "to control or prevent pollution" be treated as distinct, each modifying "real or personal property" but none modifying each other: because their equipment is used in their trade or business (equipment leasing), in this state (i.e., as part of their Arizona leasing business, not necessarily by Arizona lessees or to abate pollution in Arizona), to control or prevent pollution (by the lessees), they qualify for the credit. The State's response is that the sentence should be read as a unity, that the use of the property must be to control or prevent pollution in this state in the taxpayer's trade or business and that Plaintiffs are not

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entitled to a credit for assisting others to abate their pollution, only for abating the pollution they would otherwise create.

First, as a matter of grammar, to read properly under Plaintiffs' interpretation, the statute would require commas between the clauses and probably an "and" before "to control and prevent pollution." Since the legislature wrote one uninterrupted sentence, it presumably intended that the statute be so read, with every word influencing every other word. In addition, it is unlikely that the legislature would have sacrificed Arizona tax revenues, for no benefit to the people of this state and no assistance in complying with Clean Air Act mandates, to reduce pollution in other states; yet this conclusion is compelled by Plaintiffs' interpretation, which defines the relevant business as the (non-dust-producing) leasing of equipment. A review of the legislative history provides additional support. The House fact sheets on HB 2059, which became this section, at every stage identify a purpose of the bill as "clarifying" the definition of pollution control equipment. Furthermore, if HB 2059 were interpreted to make a substantive change in the pollution control credit, there would be a net increase in tax revenue, as it would deny the credit to lessors while lessees would still not qualify because of the unchanged requirement that the party claiming the credit "purchase" the equipment. Yet there is no Proposition 108 language in the bill as finally passed by both houses and signed by the governor. The Court therefore concludes that legislature believed that it was clarifying rather than making substantive revenue-increasing changes.

As Plaintiffs' equipment is denied the credit under the language of the 1994 statute, it is immaterial whether the 2000 amendment barring the credit for pollution control devices attached to motor vehicles was meant to apply retroactively. The letter to Wentworth Webb & Postal does not aid Plaintiffs, and should not have been brought before the Court. "A private taxpayer ruling may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling." A.R.S. § 42-2101(D).

Therefore, IT IS ORDERED:

1. Granting Defendant's Motion For Summary Judgment.
2. Denying Plaintiffs' Motion For Summary Judgment.